

CHICAGO, MILWAUKEE AND ST. PAUL RAILWAY
COMPANY.

MAY 13, 1898.—Referred to the House Calendar and ordered to be printed.

Mr. UPDEGRAFF, from the Committee on the Judiciary, submitted the
following

REPORT.

[To accompany H. Res. 262.]

The Committee on the Judiciary, to whom was referred joint resolution No. 262, hereto attached, in reference to authorizing and directing the Secretary of the Treasury to honor, allow, and pay the requisition of the Secretary of the Interior ordering the return to the Chicago, Milwaukee and St. Paul Railway Company of \$15,335.76 paid or deposited by said company for right of way, etc., never received by said company, said money now in the Treasury of the United States, beg leave to submit the following report:

We find the facts to be that the Chicago, Milwaukee and St. Paul Railway Company, by and through Gen. John Lawler, in 1880 made three several agreements with the Sioux Indians in Dakota Territory for the right of way and depot grounds through their reservation to the Black Hills, authority having previously been given to said company to enter upon negotiation for said right of way, etc.

We find that these agreements were approved by the Secretary of the Interior, and approved with the understanding, both by the Secretary and the railroad company, and also the Indians, that under a prior treaty—made in 1876—the Secretary had authority to approve said agreements for right of way, etc., without the intervention of Congress.

The railway company at that time was ready and desirous of occupying said right of way and building the road.

We find that with this understanding stated in writing by the Secretary directed to the company, Samuel J. Kirkwood, the Secretary of the Interior, accepted from said company, in 1881 and 1882, \$15,335.76. After he approved the agreement and accepted the money, that it was found by the Interior Department that the Secretary did not have the authority to grant the rights and privileges to the company provided for in said agreements by his approval thereof, and that said agreements would have to be sent to Congress for ratification and the company was not permitted to enter and occupy the right of way, etc., as

stated and agreed, or any part thereof, and that pending Congressional action on said agreements the money was deposited in the Treasury of the United States. For all of which see Senate Ex. Doc. No. 20, Forty-eighth Congress, first session, copy hereto attached, marked "Exhibit A," and made part hereof.

We find that the Chicago, Milwaukee and St. Paul Railway Company made application to the Secretary of the Interior for the return of the money so paid, and that after a full trial and hearing of the case the Secretary of the Interior, on March 3, 1898, rendered a decision thereon, reciting the history of the case, and decided that the Government had no right to longer retain in its possession the money, \$15,335.76, so deposited or paid by the Chicago, Milwaukee and St. Paul Railway Company, and ordered that an account be stated for the amount and the requisition therefor sent to the Treasury for payment, which was done, which account or requisition the Auditor for the Treasury Department has refused to honor or pay, assigning as a reason therefor that the money having been covered into the Treasury no authority exists for its return without direction therefor from Congress.

The full opinion of the Secretary of the Interior being hereto attached, together with order for the stating of the account, marked "Exhibit B," and made part hereof.

We find that the money having been paid to the Secretary and received by him under a misapprehension, and there never having been any consideration whatever received by the said railway company, that it is proper and right the money should be returned; and we therefore report the joint resolution back with the recommendation that it do pass.

EXHIBIT A.

[Senate Ex. Doc. No. 20, Forty-eighth Congress, first session.]

Message from the President of the United States, transmitting a communication from the Secretary of the Interior of 4th instant, submitting draft of bill "to accept and ratify certain agreements made with the Sioux Indians and to grant a right of way to the Chicago, Milwaukee and Saint Paul Railway Company through the Sioux Reservation in Dakota."

[December 19, 1883.—Read and referred to the Committee on Indian Affairs and ordered to be printed.]

To the Senate and House of Representatives:

I transmit herewith a communication from the Secretary of the Interior of the 4th instant, submitting, with accompanying papers, draft of a bill "to accept and ratify certain agreements made with the Sioux Indians and to grant a right of way to the Chicago, Milwaukee and Saint Paul Railway Company through the Sioux Reservation in Dakota."

The matter is presented for the consideration of the Congress.

CHESTER A. ARTHUR.

EXECUTIVE MANSION,
December 17, 1883.

DEPARTMENT OF THE INTERIOR,
Washington, December 4, 1883.

SIR: I have the honor to submit, herewith, for your consideration, a communication of the 26th November, 1883, from the Commissioner of Indian Affairs, and accompanying draft of bill therein noted for the ratification of four several agreements with the Sioux Indians in Dakota, granting to the Chicago, Milwaukee and Saint Paul Railway Company the right of way across their lands and the right of occupying certain land for railway purposes, as therein set forth, namely: Two agreements made November 2, 1880, one made November 10, 1880, and one made November 13, 1880, all approved by Mr. Secretary Schurz, January 3, 1881.

These agreements have not, however, been ratified by Congress. As such action is considered necessary, I respectfully recommend that the matter be presented for the favorable consideration of that body.

I have the honor to be, very respectfully, your obedient servant,

H. M. TELLER, *Secretary*.

The PRESIDENT.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, November 26, 1883.

SIR: Referring to Department letter of March 9, 1882, wherein, in reply to the question submitted in office letter of March 1, 1882, viz, Whether or not the Dakota Central Railway Company and the Chicago, Milwaukee and Saint Paul Railway Company, which had severally acquired a right of way through the Sioux Indian Reservation, in Dakota, were to be considered as having done so under the stipulations of the third article of the agreement with the Sioux Indians of September 26, 1876, ratified by act of Congress approved February 28, 1877 (19 Stat., 255), in reference to the construction of roads through said reservation, it was held that when the three wagon roads indicated in General Orders, No. 3, Headquarters Military Division of the Missouri, April 5, 1877, were located, the rights under said agreement were exhausted, and that agreements of later date made with the railway companies should be presented for ratification by Congress; also to Department letter to this office of 10th March last to the effect that "in all cases where right of way for railroads through Indian reservations is not provided for by treaties or agreements by the United States with the Indians, Congressional action is necessary to ratify agreements by railway companies with the Indians for such right of way," &c., and directing that the necessary papers be prepared for submitting the agreements as made by the said railway companies with the Sioux Indians to Congress at its next session for action, I have the honor to report, so far as the Chicago, Milwaukee and Saint Paul Railway Company is concerned, as follows: The agreements entered into by this company with the Sioux Indians, under the direction and with the approval of the Department, are four in number, viz:

No. 1. Agreement dated November 2, 1880, made between the chiefs, headmen, and heads of families of a majority of the Two Kettle, Sans Arc, Minneconjou, and Blackfeet Sioux Indians (Cheyenne River Agency), Lower Yanktonnais, Sioux Indians (Crow Creek Agency), Lower Brule Sioux Indians (Lower Brule Agency); Ogallalla Sioux Indians (Pine Ridge Agency), Brule, Loafer, Wahzahzah, Minneconjou, and mixed Sioux Indians (Rosebud Agency), and Upper Yanktonnais, Lower Yanktonnais, Uncapapa, and Blackfeet Sioux Indians (Standing Rock Agency), severally occupying the Sioux Indian Reservation, Territory of Dakota, parties of the first part, and the Chicago, Milwaukee and Saint Paul Railway Company, party of the second part, grants to said company:

1st. The right to hold and occupy not less than 1,000 acres of land at the eastern terminus of said railway company, on the west bank of the Missouri, at or near the mouth of American Crow Creek, Dakota Territory, for freight and passenger depots, &c., to be occupied under such regulations as the Secretary of the Interior may prescribe, and to be located as soon as surveys can be made.

2d. The right to construct, operate, and maintain a line of railway commencing at a point on the west bank of the Missouri, at or near the mouth of American Crow Creek, running in a westerly direction through the reserve; also the right to occupy and hold a strip of land not exceeding 200 feet in width, extending the entire length of said line across the reserve.

3d. The right to occupy and hold along the line of road, exclusively for railway purposes, not exceeding 160 acres of land at any one point.

4th. The right to open and use a wagon road upon the line of said railway, with the privilege of connecting the same with the Black Hills wagon road intersecting or near said railway.

Consideration to be paid by the railway company as follows:

(a) In respect of the 1,000 acres west of the Missouri, \$5 per acre, prior to commencement of construction of the road.

(b) For right of way, at the rate of \$110 per mile—one-half to be paid prior to construction, the residue after completion of 100 miles of road.

(c) For station lands, \$4 per acre, payment to be made at such time and in such manner as the Secretary of the Interior may direct.

The above-mentioned agreement is signed by the chiefs, headmen, and heads of a majority of families of the Ogallalla Sioux Indians (Pine Ridge Agency), Brule, Loafer, Wahzahzah, Minneconjou, and mixed Sioux (Rosebud Agency), Lower Yanktonnais Sioux (Crow Creek Agency), Lower Brule Sioux (Lower Brule Agency), and Two Kettle, Sans Arc, Minneconjou, and Blackfeet Sioux (Cheyenne River Agency).

No. 2. Similar agreement of same date and between the same parties signed by the chiefs, headmen, and heads of a majority of families of the Upper and Lower Yanktonnais, Uncapapa, and Blackfeet Sioux (Standing Rock Agency).

No. 3. Supplemental agreement dated November 10, 1880, by which the Chicago, Milwaukee and Saint Paul Railway Company agree to pay to individual Lower Brule Sioux Indians the value of their improvements on the lands west of the Missouri River at or near the mouth of American Crow Creek, to be selected under said agreement of November 2, 1880.

No. 4. Agreement dated November 13, 1880, between the chiefs, headmen, and heads of families of a majority of Lower Yanktonnais Sioux Indians at Crow Creek Agency, Dakota Territory, and Spotted Tail and White Thunder, chief of the Brule, Loafer, Wahpahpah, Minneconjou, and mixed Sioux Indians, severally occupying the Sioux Indian Reservation in the Territory of Dakota, parties of the first part, and the Chicago, Milwaukee and Saint Paul Railway Company of the second part, grants to said company:

1. The right to hold and occupy not less than ——— acres of land at the western terminus of said railway on the eastern bank of the Missouri River at or near the mouth of American Creek, for freight and passenger depots, &c., to be occupied under such regulations as the Secretary of the Interior may prescribe, and to be definitely located as soon as surveys can be made.

2. The right to construct, operate, and maintain a line of railway over and across the Crow Creek Reserve on the east side of the Missouri, running in a westerly direction; also the right to occupy and hold for railway purposes a strip of land not exceeding 200 feet in width over and across said reserve, consideration to be paid by the railway company as follows:

(a) In respect of land to be selected on the eastern bank of the Missouri River for freight and passenger depots, &c., \$5 per acre.

(b) For right of way, \$4 per acre prior to construction of the road. Payment to be made in such manner as the Secretary of the Interior may direct.

Said agreements of November 2, 10, and 13, 1880, were severally approved, as executed, by the Secretary of the Interior, January 3, 1881, except as to the agreement of November 13 with the Crow Creek Indians, which was modified by indorsement limiting the land to be selected at the western terminus on the east bank of the river for freight and passenger depots to 200 acres, and to 160 acres for station grounds at points east of said terminus.

On the same date the Secretary of the Interior approved the maps of preliminary survey of the road as projected from Brule Agency westward through the Sioux Reserve.

By memorandum in writing, dated January 5, 1881, the Chicago, Milwaukee and Saint Paul Railway Company waived and relinquished the right to occupy more than 640 acres of the 1,000 acres of land west of the Missouri River granted by the agreement of November 2, 1880.

On the 18th January, 1881, said railway company filed in the Department a bond in the sum of \$30,000, for the faithful performance of said agreements, and in other respects, for protection of the Indians, which was approved by the Secretary of the Interior January 20, 1881.

On the 25th November, 1881, said railway company filed in the Department a plat of the 640 acres west of the Missouri River, selected under the agreement of November 2, 1880; also a plat of 188 acres on the Crow Creek Reserve east of the river, selected under the agreement of November 13, 1880; also a map of the line of road as constructed upon the Crow Creek Reserve under the terms of said last-mentioned agreement. Said maps were severally approved by you on the 6th October, 1882.

Under said agreements the Chicago, Milwaukee and Saint Paul Railway Company has made the following payments to the Department for the use of the Sioux Indians, viz:

October 8, 1881, for section, 640 acres, west of Missouri River, at \$5 per acre.	\$3, 200. 00
For 10 stations, 20 acres each, 200 acres, west of river, at \$4 per acre.....	800. 00
For 90 $\frac{1}{2}$ miles (half length) of track west of river, at \$110 per mile.....	9, 911. 00
	<hr/> 13, 911. 00
October 13, 1882, for 121.19 acres right of way through Crow	
Creek Reserve, at \$4 per acre.....	\$484. 76
For 188 acres depot grounds at Chamberlain, east of Missouri, at	
\$5 per acre.....	940. 00
	<hr/> 1, 424. 76

Total amount paid..... 15, 335. 76

which amount has been deposited in the Treasury, pending Congressional action on said agreements.

Under the provisions of the supplemental agreement of November 10, 1880 (No 3),

the improvements of the Lower Brule Indians on the 640-acre tract west of the Missouri have been appraised at the total sum of \$1,743.50. This amount, I understand, the Chicago, Milwaukee and Saint Paul Railway Company is ready to pay at any time upon approval of said agreement and appraisement.

In accordance with the instructions contained in Department letter of the 10th March last, I now have the honor to submit the draft of a bill to accept and ratify said several agreements, as made, for transmission to Congress, for its consideration and action.

Full copies of the several agreements are set out in the bill.

Very respectfully, your obedient servant,

H. PRICE, *Commissioner.*

The Hon. SECRETARY OF THE INTERIOR.

A BILL to accept and ratify certain agreements made with the Sioux Indians, and to grant a right of way to the Chicago, Milwaukee and Saint Paul Railway Company through the Sioux Reservation in Dakota.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That four certain agreements now on file in the Department of the Interior bearing date, respectively, the second, tenth, and thirteenth days of November, eighteen hundred and eighty, made between the several tribes and bands of Sioux Indians occupying the Great Sioux Reservation in the Territory of Dakota, acting under the supervision and by and with the approval of the Secretary of the Interior, of the one part, and the Chicago, Milwaukee and Saint Paul Railway Company, a corporation organized under the laws of the State of Wisconsin, of the other part, be, and the same are hereby, ratified and confirmed; and that a right of way through said reservation, not exceeding two hundred feet in width, with the use and occupancy of grounds adjacent thereto for depots, stations, machine shops, and so forth, as mentioned in said agreements, and according to the plans of route and survey already or hereafter to be filed and approved in the Department of the Interior, be, and the same are hereby, granted to the said Chicago, Milwaukee and Saint Paul Railway Company, its successors and assigns. Said agreements are respectively in the words and figures following, that is to say:

"Articles of agreement made and entered into this 2d day of November, 1880, between the undersigned chiefs, headmen, and heads of families of a majority of the Two Kettle, Sans Arc, Minneconjou, and Blackfeet Sioux Indians (Cheyenne River Agency); Lower Yanktonnais Sioux Indians (Crow Creek Agency); Lower Brule Sioux Indians (Lower Brule Agency); Ogallalla Sioux Indians (Pine Ridge Agency); Brule, Loafer, Wahpah, Minneconjou and mixed Sioux Indians (Rosebud Agency), and Upper Yanktonnais, Lower Yanktonnais, Uncapapa, and Blackfeet Sioux Indians (Standing Rock Agency), severally occupying the Sioux Indian Reservation in the Territory of Dakota, parties of the first part, and the Chicago, Milwaukee and Saint Paul Railway Company of Milwaukee, in the State of Wisconsin, party of the second part, its successors and assigns, witnesseth:

"That said tribes of Sioux Indians do hereby grant the said railway company, its successors and assigns, the right to hold and occupy not less than one thousand acres of land as the eastern terminus of said railway company on the western bank of the Missouri River at or near the mouth of American Crow Creek, in said Territory, for freight and passenger depots, warehouses, machine shops and foundries, steamboat and ferry landings, for all other railway purposes, for the residence of its employes, and for no other purposes, and to be occupied under such regulations as the Secretary of the Interior may prescribe for the protection of the Indians; said one thousand acres to be definitely located by said railway company as soon as the necessary surveys have been made to determine the point at which the road of said company shall strike the Missouri River. In consideration whereof the said company, party of the second part, doth hereby for itself, its successors and assigns, covenant and agree that it will, prior to the commencement of the construction of its said road through the Territory above named, pay or cause to be paid to the United States or its regularly authorized agent or agents, for the sole use and benefit of the said Indians, parties of the first part, the sum of five dollars per acre for the lands located on the Missouri River, as hereinbefore described, to be paid at such places, at such times, and in such manner as the honorable the Secretary of the Interior may hereafter direct; it is further agreed that, for the consideration hereinafter mentioned, the said Indians, parties of the first part, do hereby consent and agree that the said company, party of the second part, its successors and assigns, shall have the free and undisturbed right to locate, construct, operate, and maintain its line of railway, commencing at a point on the west bank of the Missouri River at or near the mouth of American Crow Creek, running in a westerly direction on the line surveyed and located by the Chicago, Milwaukee and Saint Paul Railway Company over and across the Great Sioux Indian Reservation in Dakota Territory; and the

right is hereby granted to occupy and hold for the use of the said railway company, its successors and assigns, a strip of land not exceeding two hundred feet in width extending the entire length of said line of railway over and across the Great Sioux Indian Reservation in said Territory of Dakota. In consideration whereof the said railway company, party of the second part, doth hereby, for itself, its successors and assigns, covenant and agree that it will, prior to the commencement of the construction of its said road through the Territory above named, pay, or cause to be paid, to the United States or its regularly authorized agent or agents, for the sole use and benefit of the said Indians, parties of the first part, the sum of one hundred and ten dollars per mile, not exceeding two hundred feet in width, for the land located on the line as surveyed by the Chicago, Milwaukee and Saint Paul Railway Company, as shown by plats thereof, filed by said railway company with the honorable the Secretary of the Interior on the — day of —, 1880.*

"It is further covenanted and agreed by the said railway company, party of the second part, its successors and assigns, that upon the commencement or beginning of the work of constructing said railway, a sum of money equal to one-half of the full amount to be paid for the sole use and benefit of said Indians, parties of the first part, shall be paid at such places, at such times, and in such manner as the honorable the Secretary may hereafter direct.

"It is further covenanted and agreed that upon the commencement or beginning of the work of constructing the said railway beyond one hundred miles distant from the Missouri River, the said railway company, party of the second part, its successors and assigns, shall pay to the said Indians, parties of the first part, the remaining one-half and residue of the amount of money herein stipulated for the construction and operation of said railway, to be paid at such places, at such times, and in such manner as the honorable the Secretary of the Interior may hereafter direct.

"It is further covenanted and agreed that the Chicago, Milwaukee and Saint Paul Railway Company, its successors and assigns, shall have the right to occupy and hold along the line of said railway, exclusively for railway purposes, not exceeding one hundred and sixty acres of land at any one point, the consideration therefor being four dollars per acre, the same to be paid at such places, at such times, and in such manner as the honorable the Secretary of the Interior may hereafter direct.

"It is further covenanted and agreed that the said railway company, its successors and assigns, shall have the right to open and use for the purpose of constructing and operating said railway, a wagon road upon the line of said railway as located by the engineers of said railway company, together with the privilege of connecting the same with the Black Hills or with any wagon road intersecting or near the line of said railway over and across the Great Sioux Indian Reservation.

"And for the considerations aforesaid, the said Indians, parties of the first part, do hereby solemnly bind themselves and the tribes to which they respectively belong, at all times hereafter to protect the said Chicago, Milwaukee and Saint Paul Railway Company, party of the second part, its successors and assigns, and its employes, in the peaceful location, construction, and operation of its said railway over and across the Great Sioux Indian Reservation.

"The foregoing articles of agreement having been fully explained to us in open council, we, the undersigned chiefs, headmen, and heads of a majority of families of the various Sioux Indians receiving rations and annuities at the agencies hereinbefore mentioned in the said Territory of Dakota, do hereby consent and agree to all stipulations therein contained.

"Witness our hands and seals at Rosebud Agency, in the Territory of Dakota, this 2d day of November, 1880, for the Ogalala Sioux, of Pine Ridge Agency.

Red Cloud, his x mark.	Dont Braid His Hair, his x mark.
Young-man-afraid-of-his-horses, his x mark.	White Cow Killer, his x mark.
White Bird, his x mark.	High Bear, his x mark.
Red Dog, his x mark.	Afraid of Bear, his x mark.
Blue Horse, his x mark.	Bad Wound, his x mark.
Three Stars, his x mark.	Weazle Bear, his x mark.
Three Bears, his x mark.	Fire Lightning, his x mark.
Daylight, his x mark.	Black Bird, his x mark.
Slow Bull, his x mark.	Iron Horse, his x mark.
No Water, his x mark.	Lone Wolf, his x mark.
Black Bear, his x mark.	Cloud Shield, his x mark.
High Wolf, his x mark.	Sorrel Horse Owner, his x mark.
No Flesh, his x mark.	Eagle Horn, his x mark.
Sword, his x mark.	Yellow Bear, his x mark.
Big Foot, his x mark.	Charging Shield, his x mark.
Little Crow, his x mark.	Black Bear, jr., his x mark.
Grass, his x mark.	

* Map of preliminary survey filed, January 3, 1881.

"We certify that the foregoing agreement was read and explained by us, and was fully understood by the above-named Indians before signing the same.

"LOUIS RICHARD,
"LOUIS ROBIDEAUX,
"FRANK MERRIVALE, his x mark,
"Official Interpreters.

"Witness: HENRY LELAR.

"Attest: W. H. Stanton, Major and Paymaster, U. S. A.; John G. Bourke, 1st Lieut. 3d Cavalry, Aid-de-camp; A. Culacomb, 2d Lieut., 5th Cavalry; V. T. McGillycuddy, U. S. Indian Agent; John Cook, U. S. Indian Agent; Robert S. Gardner, U. S. Indian Inspector; S. S. Merrill, General Manager C. M. & St. Paul Railway Company, by J. Lawler.

"Chiefs and headmen and heads of families for the Rosebud Agency Indians.

Spotted Tail, his x mark.
White Thunder, his x mark.
Swift Bear, his x mark.
Tall Lance, his x mark.
Stranger Horse, his x mark.
He Dog, his x mark.
Ring Thunder, his x mark.
Eagle Hawk, his x mark.
Sky Bull, his x mark.
Chasing Hawk, his x mark.
Beans, his x mark.
White Tail, his x mark.
White Crane Walking, his x mark.
Quick Bear, his x mark.
Good Voice, his x mark.
Pine Shooter, his x mark.
Windy A, his x mark.
Milk, his x mark.
Mule Head, his x mark.
White Thunder, his x mark.
Standing Elk, his x mark.
Calf Skin Robe, his x mark.
Four Horns, his x mark.

Spotted Tail, jr., his x mark.
White Bear, his x mark.
Holy, his x mark.
Afraid of Bear, his x mark.
White Shield, his x mark.
Rain Water, his x mark.
White Lance, his x mark.
Running Shield, his x mark.
Iron Tail, his x mark.
Shooting Cat, his x mark.
Black Horn, his x mark.
Walking Eagle, his x mark.
Crazy Hawk, his x mark.
Dog Trail, his x mark.
Swift Hawk, his x mark.
Make Noise in the Woods, his x mark.
Long Face, his x mark.
Little Hawk, his x mark.
Jumping Thunder, his x mark.
White Paints His Ears, his x mark.
Big Head, his x mark.
Medicine Horse, his x mark.

"We certify that the foregoing agreement was read and explained by us, and was fully understood by the above-named Indians before signing the same.

"LOUIS RICHARD,
"LOUIS ROBIDEAUX,
"FRANK MERRIVALE, his x mark,
"Official Interpreters.

"Witness: HENRY LELAR.

"Attest: W. H. Stanton, Major & Paymaster, U. S. A.; John G. Bourke, 1st Lieut., 3d Cavalry, Aide-de-camp; A. Culacomb, 2d Lieut., 5th Cav.; V. T. McGillycuddy, U. S. Ind. Agt.; John Cook, U. S. Ind. Agt.; Robert S. Gardner, U. S. Indian Inspector; S. S. Merrill, Genl. Manager C. M. & St. Paul Rail W. Co., by J. Lawler.

"Chiefs, headmen, and heads of families of Lower Yanktonai Sioux Indians at Crow Creek Agency, Dakota Territory.

White Ghost, his x mark.
Chasing Bear, his x mark.
Wizi, his x mark.
Crow Man, his x mark.
Blowing or Drifting Goose, his x mark.
Brother, his x mark.
Talking Crow, his x mark.
Surrounded, his x mark.
Not Afraid of Bear, his x mark.
Splits, his x mark.
Dog Back, his x mark.
Round Head, his x mark.
John Thrown-away, his x mark.
Fast Walker, his x mark.
George Banks, his x mark.
Black Eagle, his x mark.
Bad Moccasin, his x mark.

Left Hand, his x mark.
Pratt, his x mark.
With Tail, his x mark.
Went After Bear, his x mark.
Burnt Prairie, his x mark.
Yellow Man, his x mark.
Back Ward, his x mark.
Don't Know How, his x mark.
Black Eagle, his x mark.
Bowed Head, his x mark.
Slapping, his x mark.
Standing Soldier, his x mark.
White Dog, his x mark.
Owl Head, his x mark.
Long Coyotte, his x mark.
Afraid of Shooting, his x mark.

"I certify that the foregoing agreement was read and explained by me, and was fully understood by the above-named Indians before signing the same.

"MARK WELLS,
"Official Interpreter.

"Dated Crow Creek Agency, November 12, 1880.

"Attest: Wm. E. Dougherty, Capt. U. S. A., act'g agent; A. C. Bergen, A. A. Surgeon, U. S. A.; Frank O. Elliott, overseer & storekeeper; Robert S. Gardner, U. S. Indian inspector; S. S. Merrill, gen'l manager Chicago, Milwaukee and Saint Paul Railway Company, by J. Lawler.

"The chiefs, headmen, and heads of families of the Lower Brule Sioux Indians at Washington, D. C.

Iron Nation, his x mark.
Medicine Bull, his x mark.
Dead Hand, his x mark.
Handsome Elk, his x mark.

Little Pheasant, his x mark.
Bull Head, his x mark.
Big Mane, his x mark.
Bear Bird, his x mark.

"I certify that the foregoing was fully explained by me and understood by the above-named Indians before signing.

"MARK WELLS,
"Interpreter.

"ALEXANDER RENCOUNTRE,
"Chief Herder and Acting Interpreter.

"Dated Washington, D. C., Dec. 31, 1880.

"The chiefs, headmen, and heads of families of the Cheyenne River Sioux Indians at Washington, D. C.

Rattling Rib, his x mark.
Little No Heart, his x mark.

Blue Coat, his x mark.
Four Bear, his x mark.

"I certify that the foregoing was explained by me and fully understood by the above-named Indians before signing.

"MARK WELLS,
"Interpreter.

"ALEXANDER RENCOUNTRE,
"Chief Herder and Act'g Interpreter.

"Dated Washington, D. C., Dec. 31st, 1880.

"S. S. MERRILL,
"Gen'l Manager Chicago, Milwaukee and
"Saint Paul Railway Company,
"By J. LAWLER.

"Day and date above written.

"DEPT. OF THE INTERIOR, January 3, 1881.

"The within agreement is hereby approved.

"C. SCHURZ,
"Secretary."

"Articles of agreement made and entered into this 2nd day of November, 1880, between the undersigned chiefs, headmen, and heads of families of a majority of the Upper and Lower Yanktonais, Uncapapas, and Blackfeet Sioux Indians, Standing Rock Agency; Two Kettle, Sans Ark, Minneconjou, and Blackfeet Sioux Indians, Cheyenne River Agency; Lower Yanktonais Sioux Indians, Crow Creek Agency; Lower Brule Sioux Indians, Lower Brule Agency; Ogalala Sioux Indians, Pine Ridge Agency; Brule, Loafer, Wahzazah, Minneconjou, and mixed Sioux Indians, Rosebud Agency; severally occupying the Sioux Indian Reservation in the Territory of Dakota, parties of the first part, and the Chicago, Milwaukee and St. Paul Railway Company, of Milwaukee, in the State of Wisconsin, party of the second part, witnesseth:

"That the said tribes of Sioux Indians do hereby grant the said railway company, its successors and assigns, the right to hold and occupy not less than one thousand acres of land at the eastern terminus of said railway company on the western bank of the Missouri River, at or near the mouth of American Crow Creek, in said Territory, for freight and passenger depots, warehouses, machine shops and foundries, steamboat and ferry landings; for all other railway purposes; for the residence of its employés, and for no other purposes; and to be occupied under such regulations as

the Secretary of the Interior may prescribe for the protection of the Indians; said one thousand acres to be definitely located by said railway company as soon as the necessary surveys have been made to determine the point at which the road of said company shall strike the Missouri River. In consideration whereof, the said company, party of the second part, doth hereby, for itself, its successors and assigns, covenant and agree that it will, prior to the commencement of the construction of its said road through the Territory above named, pay or cause to be paid to the United States or its regularly authorized agent or agents for the sole use and benefit of the said Indians, parties of the first part, the sum of five dollars per acre for the lands located on the Missouri River, as hereinbefore described, to be paid at such place, at such times, and in such manner as the honorable the Secretary of the Interior may hereafter direct. It is further agreed that for the consideration herein-after mentioned, the said Indians, parties of the first part, do hereby consent and agree that the said company, party of the second part, its successors and assigns, shall have the free and undisturbed right to locate, construct, operate, and maintain its line of railway, commencing at a point on the west bank of the Missouri River at or near the mouth of American Crow Creek, running in a westerly direction on the line surveyed and located by the Chicago, Milwaukee and Saint Paul Railway Company, over and across the Great Sioux Indian Reservation in Dakota Territory; and the right is hereby granted to occupy and hold for the use of the said railway company, its successors and assigns, a strip of land not exceeding two hundred feet in width, extending the entire length of said line of railway over and across the Great Sioux Indian Reservation in said Territory of Dakota. In consideration whereof the said railway company, party of the second part, doth hereby, for itself, its successors and assigns, covenant and agree that it will, prior to the commencement of the construction of its said road through the Territory above named, pay or cause to be paid to the United States or its regularly authorized agent or agents, for the sole use and benefit of the said Indians, parties of the first part, the sum of one hundred and ten dollars per mile, not exceeding two hundred feet in width, for the lands located on the line as surveyed by the Chicago, Milwaukee and St. Paul Railway Company, as shown by plats thereof filed by said railway company with the honorable the Secretary of the Interior on the ——— day of ———, 1880.

"It is further covenanted and agreed by the said railway company, party of the second part, its successors and assigns, that upon the commencement or beginning of the work of constructing said railway a sum of money equal to one-half of the full amount to be paid for the sole use and benefit of said Indians, parties of the first part, shall be paid at such places, at such times, and in such manner as the honorable the Secretary of the Interior may hereafter direct. It is further covenanted and agreed that upon the commencement or beginning of the work of constructing the said railway beyond one hundred miles distant from the Missouri River, the said railway company, party of the second part, its successors and assigns, shall pay to the said Indians, parties of the first part, the remaining one-half and residue of the amount of money herein stipulated for the construction and operation of said railway, to be paid at such places, at such times, and in such manner as the honorable the Secretary of the Interior may hereafter direct.

"It is further covenanted and agreed that the Chicago, Milwaukee and St. Paul Railway Company, its successors and assigns, shall have the right to occupy and hold along the line of said railway, exclusively for railway purposes, not exceeding one hundred and sixty acres of land at any one point, the consideration thereof being four dollars per acre, the same to be paid at such places, at such times, and in such manner as the honorable the Secretary of the Interior may hereafter direct.

"It is further covenanted and agreed that the said railroad company, its successors and assigns, shall have the right to open and use for the purpose of constructing and operating said railway a wagon road upon the line of said railway, as located by the engineers of said railway company, together with the privilege of connecting the same with the Black Hills, or with any wagon road intersecting or near the line of said railway over and across the Great Sioux Indian Reservation.

"And for the considerations aforesaid the said Indians, parties of the first part, do hereby solemnly bind themselves and the tribes to which they respectively belong at all times hereafter to protect the said Chicago, Milwaukee and Saint Paul Railway Company, party of the second part, its successors and assigns, and its employés in the peaceful location, construction, and operation of its said railway over and across the Great Sioux Indian Reservation.

"The foregoing articles of agreement having been fully explained to us in open council, we, the undersigned, chiefs, headmen, and heads of a majority of families of the various Sioux Indians receiving rations and annuities at the agencies hereinbefore mentioned, in the said Territory of Dakota, do hereby consent and agree to all stipulations herein contained.

"Witness our hands and seals at Standing Rock, in the Territory of Dakota, this —

day of December, 1880, for the Upper and Lower Yanktonnais, Uncapapas, and Black-foot Indians of the Sioux Nation.

Chief John Grass, x his mark. (Seal.)	Eagle Walking, x his mark. (Seal.)
Chief Two Bears, x his mark. (Seal.)	Little Bird, x his mark. (Seal.)
Chief Thunder Hawk, x his mark. (Seal.)	Red Earth, x his mark. (Seal.)
Chief Big Head, x his mark. (Seal.)	Looking Crow, x his mark. (Seal.)
Bear Ribs, x his mark. (Seal.)	Fast Horse, x his mark. (Seal.)
Bear's Face, x his mark. (Seal.)	Rushing Thunder, x his mark. (Seal.)
Walking Shooting, x his mark. (Seal.)	Afraid of Bear, x his mark. (Seal.)
Long Soldier, x his mark. (Seal.)	Takes the Gun, x his mark. (Seal.)
Red Bull, x his mark. (Seal.)	Mouse Eye, x his mark. (Seal.)
Cotton Wood, x his mark. (Seal.)	Bob Tail Bear, x his mark. (Seal.)
Scared Eagle, x his mark. (Seal.)	Pretended Eagle, x his mark. (Seal.)
Wolf Necklace, x his mark. (Seal.)	No Heart, x his mark. (Seal.)
Bull Head, x his mark. (Seal.)	Sitting Elk, x his mark. (Seal.)
Drags the Wood, x his mark. (Seal.)	Scarlet Necklace, x his mark. (Seal.)
Blue Thunder, x his mark. (Seal.)	Crazy Walking, x his mark. (Seal.)
Grey Dog, x his mark. (Seal.)	William Halsey, x his mark. (Seal.)
Fire Heart, jr., x his mark. (Seal.)	Black Horse, x his mark. (Seal.)
Gage, x his mark. (Seal.)	Broken Head, x his mark. (Seal.)
Wild Bear, x his mark. (Seal.)	Spotted Face, x his mark. (Seal.)
Follows the Woman, x his mark. (Seal.)	Joseph Primeau.

"I certify that the foregoing agreement was read and explained by me, and was fully understood by the above-named Indians before signing the same.

"CHARLES PRIMEAU,
"Official Interpreter."

"Dated Standing Rock Agency, December 13, 1880.

"Attest: J. A. Stephan, U. S. Indian agent; E. Butler, Capt. 5th Inf'ty., U. S. A.; James H. Stewart, clerk, Standing Rock Agency; Hermann Karberg, Indian trader; Robert S. Gardner, U. S. Indian inspector; S. S. Merrill, gen. manager C., M. & St. Paul Railway Co., by Jos. Rankin.

"DEPARTMENT OF THE INTERIOR, *January 3, 1881.*

"The within agreement is hereby approved.

"C. SCHURZ,
"Secretary."

"DEPARTMENT OF THE INTERIOR,
"Washington, *January 5, 1881.*

"Whereas, by the terms of the recent agreements entered into by and between the Chicago, Milwaukee and St. Paul Railway Company and the Sioux Indians of the various tribes living upon what is known as the Great Sioux Reservation in Dakota Territory for the granting of a right of way, &c., to said company through and across said reservation, which agreements were approved by the honorable the Secretary of the Interior on the 3rd day of January, 1881, it was provided that the said company should have the right to hold and occupy one thousand acres of land at the terminus of said road on the western bank of the Missouri River upon said reservation upon the payment of the sum of five dollars (\$5.00) per acre, at time and manner as prescribed in said agreements: Now I, John Lawler, on behalf of said railway company, do hereby agree that if the said Indians shall so request, prior to the time when it shall become necessary for said railway company to go upon said land at said terminus, to relinquish all right to take, hold, and occupy more than six hundred and forty acres of land at said terminus, to be chosen and surveyed as provided for by the terms of the agreements hereinbefore referred to.

"J. LAWLER,
"For Chicago, Milwaukee and Saint Paul Railway Company."

Supplemental agreement.

(Signed in duplicate.)

"Whereas an agreement has been made and entered into by and between the several tribes of the Sioux Nation and the Chicago, Milwaukee and Saint Paul Railway Company; and whereas by the terms of which agreement the right of way is granted to said railway company to construct, maintain, and operate its railway across the Great Sioux Reservation, together with the right to use, hold, and occupy certain other lands described in the aforesaid agreement, it is hereby further understood and agreed

by and between the parties aforesaid that the said railway company shall pay to the individual occupants of lands at Lower Brule embraced in the aforesaid agreement, such additional compensation for the improvements made on their lands by said occupants as may be agreed upon by and between the aforesaid railway company and a commission appointed by the Secretary of the Interior and one commissioner selected by the Indians.

"It is further understood and agreed that the sum determined to be paid by said commission shall be paid to the individual occupants or in such other manner as the Secretary of the Interior may direct.

"Witness our hand and seal this day affixed to the foregoing agreement.

"Lower Brule Agency, Dakota, Novbr. 10th, A. D. 1880.

[SEAL.]

"J. LAWLER,

"For Chicago, Milwaukee and Saint Paul Railway Company."

"DEPARTMENT OF THE INTERIOR, January 3, 1881.

"The within supplemental agreement is hereby approved.

"C. SCHURZ,

"Secretary."

"Articles of agreement made and entered into this 13th day of November, 1880, between the undersigned chiefs, headmen, and heads of families of a majority of the Lower Yanktonnais Sioux Indians at Crow Creek Indian Agency, Dakota T'y, and Spotted Tail and White Thunder, chiefs of the Brule, Loafer, Wahpahpah, Minneconjou, and mixed Sioux Indians, severally occupying the Sioux Indian Reservation, in the Territory of Dakota, parties of the first part, and the Chicago, Milwaukee and St. Paul Railway Company of Milwaukee, in the State of Wisconsin, party of the second part, witnesseth:

"That said tribes of Sioux Indians do hereby grant the said railway company, its successors and assigns, the right to hold and occupy not less than ——— acres of land at the western terminus of said railway on the eastern bank of the Missouri River, at or near the mouth of American Creek in said Territory, for freight and passenger depots, warehouses, machine shops and foundries, steamboat and ferry landings, and for all other railway purposes; for the residence of its employes, and for no other purposes, and to be occupied under such regulations as the Hon. Secretary of the Interior may prescribe for the protection of the Indians, said ——— acres of land to be definitely located by said railway company as soon as the necessary surveys have been made to determine the point at which the road of said company shall strike the Missouri River.

"In consideration whereof the said railway company, party of the second part, doth hereby for itself, its successors and assigns, covenant and agree that it will, prior to the commencement of the construction of its said road through the Territory above named, pay or cause to be paid to the United States, or its regularly authorized agent or agents, for the sole use and benefit of the said Indians, parties of the first part, the sum of five dollars per acre for the lands located on the Missouri River, as hereinbefore described, to be paid at such place, at such time, and in such manner as the honorable the Secretary of the Interior may hereafter direct.

"It is further agreed that, for the consideration hereinafter mentioned, the said Indians, parties of the first part, do hereby consent and agree that the said railway company, its successors and assigns, party of the second part, shall have the free and undisturbed right to locate, construct, operate, and maintain its line of railway wheresoever it touches, runs over or across the said Crow Creek Reservation, on the eastern side of the Missouri River, in said Territory of Dakota, running in a westerly direction on the line surveyed and located by the Chicago, Milwaukee and St. Paul Railway Company over and across said Crow Creek Reservation, in said Territory of Dakota; and the right is hereby granted to occupy and hold for the use of the said railway company, its successors and assigns, a strip of land not exceeding two hundred (200) feet in width, extending the entire length of said line of railway over and across the Crow Creek Indian Reservation, in said Territory of Dakota. In consideration whereof the said railway company, party of the second part, doth hereby, for itself, its successors and assigns, covenant and agree that it will, prior to the commencement of the construction of its said road through the Territory above named, pay or cause to be paid to the United States or its regularly authorized agent or agents, for the sole use and benefit of the said Indians, parties of the first part, the sum of four dollars per acre of each and every acre used and occupied by said railway company within the prescribed limits of two hundred feet wide, extending the entire length of said line over and across and through the Crow Creek Indian Reservation, in said Territory of Dakota, to be paid at such place, such time, and in such manner as the honorable the Secretary of the Interior may hereafter direct.

"And for the considerations aforesaid, the said Indians, parties of the first part, do

hereby solemnly bind themselves and the tribes to which they respectively belong, at all times hereafter to protect the said Chicago, Milwaukee and Saint Paul Railway Company, its successors and assigns, party of the second part, and its employés, in the peaceful location, construction, and operation of its said railway over and across the Crow Creek Indian Reservation in said Territory of Dakota.

"The foregoing articles of agreement having been fully explained to us in open council, we, the undersigned chiefs, headmen, and heads of a majority of families of the Lower Yanktonais tribe of Sioux Indians receiving rations and annuities at Crow Creek Indian Agency in the Territory of Dakota, Spotted Tail and White Thunder, chiefs of the Brule, Loafer, Wahzahzah, Minneconjou, and mixed Sioux Indians at Rosebud Agency, in said Territory of Dakota, by authority and power of attorney herewith attached and made part of this agreement, do hereby consent and agree to all stipulations therein contained.

"Witness our hands and seals at Crow Creek Agency, in the Territory of Dakota, this 13th day of November, 1880.

White Ghost, his x mark. [Seal.]
 Chasing Bear, his x mark. [Seal.]
 Wizi, his x mark. [Seal.]
 Crow Man, his x mark. [Seal.]
 Drifting Goose, his x mark. [Seal.]
 Brother, his x mark. [Seal.]
 Talking Crow, his x mark. [Seal.]
 Surrounded, his x mark. [Seal.]
 Not Afraid of Bear, his x mark. [Seal.]
 Splits, his x mark. [Seal.]
 Dog Back, his x mark. [Seal.]
 Round Head, his x mark. [Seal.]
 Fast Walker, his x mark. [Seal.]
 John Thrown-away, his x mark. [Seal.]
 George Banks, his x mark. [Seal.]
 Fast Walker, his x mark. [Seal.]
 Black Eagle, his x mark. [Seal.]

Bad Moccasin, his x mark. [Seal.]
 Left Hand, his x mark. [Seal.]
 Pratt, his x mark. [Seal.]
 With Tail, his x mark. [Seal.]
 Went After Bear, his x mark. [Seal.]
 Burnt Prairie, his x mark. [Seal.]
 Yellow Man, his x mark. [Seal.]
 Don't Know How, his x mark. [Seal.]
 Black Eagle, his x mark. [Seal.]
 Bowed Head, his x mark. [Seal.]
 Slapping, his x mark. [Seal.]
 Standing Soldier, his x mark. [Seal.]
 White Dog, his x mark. [Seal.]
 Owl Head, his x mark. [Seal.]
 Long Coyotte, his x mark. [Seal.]
 Afraid of Shooting, his x mark. [Seal.]

"I certify that the foregoing agreement was read and explained by me, and was fully understood by the above-named Indians before signing the same.

"MARK WELLS,
 "Official Interpreter.

Spotted Tail, his x mark, [Seal.]

White Thunder, his x mark, [Seal.]

for and on behalf of the Brule, Loafer, Wahzahzah, Minneconjou, and mixed Sioux Indians at Rosebud Agency, as contained in power of attorney herewith attached.

"Witness to marks of Indians signing this agreement:

"JOHN C. BEVERIDGE,
 "Office and Issue Clerk.

"M. P. POMEROY,
 "Agency Physician.

"ROBERT TURNER,
 "Brule Agency Physician.

"JAMES N. EBY,
 "ROBERT S. GARDNER,

"U. S. Indian Inspector.

"S. S. MERRILL,

"General Manager Chicago, Milwaukee and Saint Paul Railway Company,

"By J. LAWLER."

"DEPARTMENT OF THE INTERIOR,
 "January 3, 1881.

"The within agreement is hereby approved, with the proviso that the said railway company shall be entitled under the same to land at the western terminus of their road on the eastern bank of the Missouri River, to an amount not to exceed two hundred acres; and in traversing the Sioux Reservation east of said river, in approaching said terminus, to a strip of land not exceeding 200 feet in width, and not to exceed 160 acres for depot grounds at each of such points east of said terminus as may be necessary, to be paid for at the rates herein agreed upon.

"C. SCHURZ,
 "Secretary.

"Know all men by these presents that we, the undersigned chiefs, headmen, and heads of a majority of families of the Ogalala Sioux Indians (Pine Ridge Agency),

and the Brule, Loafer, Wahzahzah, Minneconjou, and mixed Sioux Indians (Rosebud Agency), in the Territory of Dakota, have made, constituted, and appointed, and by these presents do make, constitute, and appoint Spotted Tail and White Thunder, at Rosebud Agency, in the Territory aforesaid, to act for us in negotiating for the selling of certain lands to the Chicago, Milwaukee and St. Paul Railway Company, at the eastern terminus of said railway company west of the Missouri River, and lying on both sides of the American Crow Creek in the Territory aforesaid.

"In witness whereof we have hereunto set our hands this 2nd day of November, 1880.

Red Cloud, his x mark.

Young Man Afraid of his Horses, his x mark.

White Bird, his x mark.

Red Dog, his x mark.

Blue Horse, his x mark.

Three Stars, his x mark.

Three Bears, his x mark.

Daylight, his x mark.

Slow Bull, his x mark.

No Water, his x mark.

Black Bear, his x mark.

High Wolf, his x mark.

No Flesh, his x mark.

Sword, his x mark.

Big Foot, his x mark.

Little Crow, his x mark.

Grass, his x mark.

Don't Braid His Hair, his x mark.

White Cow Killer, his x mark.

High Bear, his x mark.

Afraid of Bear, his x mark.

Bad Wound, his x mark.

Weazle Bear, his x mark.

Fire Lightning, his x mark.

Black Bird, his x mark.

Iron Horse, his x mark.

Lone Wolf, his x mark.

Cloud Shield, his x mark.

Sorrel Horse Owner, his x mark.

Eagle Horse, his x mark.

Yellow Bear, his x mark.

Charging Shield, his x mark.

Black Bear, jr., his x mark.

"We certify that the foregoing agreement was read and explained by us, and was fully understood by the above-named Indians before signing the same.

"LOUIS RICHARD.

"LOUIS ROBIDEAUX.

"FRANK MERRIVALE, his x mark.

"Witness:

"HENRY LELAR.

"V. T. MCGILLYCUDDY,

"U. S. Indian Agent.

"ROBERT S. GARDNER,

"U. S. Indian Inspector.

"Be it remembered that on this 2nd day of November, A. D. 1880, personally appeared before me the above-named Indians, to me known to be the identical persons who executed the foregoing power of attorney, and acknowledged that they executed the same freely and voluntarily for the uses and purposes therein expressed.

"In testimony whereof I have hereunto set my hand and seal this 2nd day of November, A. D. 1880, at Rosebud Agency, D. T.

[SEAL.]

"HENRY LELAR,

"U. S. Commissioner."

SEC. 2. That whenever the right of way and lands the use and occupancy whereof is hereby granted shall cease to be used for the purposes aforesaid, the same shall revert to the United States.

SEC. 3. That Congress hereby reserves the right at any time to alter, amend, or repeal this act or any part thereof.

EXHIBIT B.

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE ASSISTANT ATTORNEY-GENERAL,
Washington, March 3, 1898.

SIR: The Chicago, Milwaukee and St. Paul Railway Company has filed an application for the return of a sum of money which was deposited by said company with the Secretary of the Interior, amounting to \$15,335.76, to be applied in payment for certain lands in the Sioux Indian Reservation under agreements made by said company with the Sioux Indians of Dakota in 1881, which has been referred to me for an opinion as to whether said application should be granted.

This is a renewal of a former application for the return of said sum which was rejected by the Department October 21, 1895 (21 L. D., 324), the company now insisting that the law and facts controlling this application were misconstrued in the

decision of October 21, 1895, and as this is a matter solely between the Government and the company it asks that the application may be reconsidered.

The history of the initiation of this transaction will be found in the records of the Indian division, part of which is embraced in Senate Executive Document No. 20, Forty-eighth Congress, first session, from which it appears that in 1880 the Sioux Indians in Dakota entered into four several agreements with the Chicago, Milwaukee and St. Paul Railway Company, granting to said company the right of way across their lands and the right to hold and occupy certain lands for railway purposes, which were approved by the Secretary of the Interior, January 3, 1881, with certain modifications, and on January 18, 1881, the company filed in the Department a bond for the faithful performance of the agreements, which was approved by the Secretary of the Interior, January 20, 1881.

These agreements were evidently entered into between the railroad company and the Sioux Indians and were approved by the Secretary of the Interior under the belief that the right and privilege therein bargained for could be acquired under the stipulations contained in the second article of the treaty or agreement made with the Sioux Indians September 26, 1876, by commissioners on the part of the United States, and ratified by the act of Congress approved February 28, 1877 (19 Stat., 255), by which the Indians consented to the construction of roads from accessible points on the Missouri River through their reservation to the country lying immediately west, not to exceed three in number. If these agreements had been authorized by that stipulation the ratification of them by Congress would not have been necessary in order to authorize the railway company to enter upon said reservation and to construct and operate its road, but the right would have become vested and complete upon the payment of the amount stipulated in the agreements. That this view was entertained by the company and the Secretary of the Interior at the time the money was paid is shown by the following correspondence between Gen. John Lawler, the agent of the company, and the Secretary of the Interior:

WASHINGTON, D. C., October 3, A. D. 1881.

Hon. S. J. KIRKWOOD,
Secretary of the Interior:

I have the honor to direct your attention to certain agreements, approved by the Secretary of the Interior on the 3d day of January, A. D. 1881, granting to the Chicago, Milwaukee and St. Paul Railway Company, in consideration of certain payments to be made, sundry specified rights upon the Great Sioux Indian Reservation, in the Territory of Dakota. These rights may be summarized as follows: The right to hold and occupy lands for railway purposes on the Missouri River and at intervals along the line of the proposed railway; the right of way for the proposed railway of said company and the right to open and control a wagon road upon or as near as it shall be convenient and practicable to said railway line, as surveyed and located, and to use said right of way and wagon road in the interest of the Chicago, Milwaukee and St. Paul Railway Company for the transportation of persons and property to and from said railway over and across the Great Sioux Reservation.

I beg leave to state, on behalf of the railway company aforesaid, that it now desires to enter upon said Indian reservation for the purpose of using and enjoying the rights granted on said agreement, and it is now ready to pay for such rights the sum of money required to be paid by said "agreement before the commencement of the work of construction," to wit, "one-half of the full amount to be paid for the use and benefit of said Indians," being the sum, as it seems from the agreement, of \$11,511, the amount resulting from a calculation based on a distance of 180²/₁₀ miles that said right of way and wagon road extends over and across said Indian reservation, as shown and located upon map of line filed with the Secretary of the Interior and upon the cost of 640 acres of land on the Missouri at the rate of \$5 per acre. Wherefore, I respectfully request the Secretary of the Interior to receive said payment, or such other as in his judgment the agreement requires, or direct how the same shall be made, and thereupon to grant permission to the Chicago, Milwaukee and St. Paul Railway Company, its agents and servants, contractors and laborers, its connecting transportation lines, and all whomsoever it may designate as being or operating in the interest of said company, to enter upon the said reservation for the purpose of exercising and enjoying the rights set forth.

I have the honor to remain your obedient servant,

J. LAWLER,
For the Chicago, Milwaukee and St. Paul Railway Company.

To this the Secretary of the Interior replied as follows:

OCTOBER 7, 1881.

SIR: In reply to your letter of the 3d instant, asking about the first payment from your company under its several agreements with the Sioux Indians for the right of way and occupation of lands for railway purposes across the Great Sioux Reserva-

tion in Dakota (which agreements—four in number—were approved by the Department under date of 3d January, 1881), you are respectfully informed that, calculating the section of land on the west bank of the Missouri River (640 acres at \$5 per acre, \$3,200; 10 stations, at 20 acres each, 200 acres, at \$4 per acre, \$800; 90.1 (half length) of railway track at \$110 per mile, \$9,911—\$13,911), the amount found due as first payment by your company upon the basis presented is \$13,911, taking your verbal statement of the average quantity of lands required for way stations, calculating 10 stations at 20 acres to the station for the first half of the road.

Upon the subject of the section of land on the west bank of the Missouri River it is understood between your company and this Department that said section shall be located immediately opposite to the section line between sections 29 and 30, township 104 north, range 74 west, on the east side of the said Missouri River, and that your company will within sixty days from this date file a map of the location of the said section so taken, to be occupied under the modified agreement with the Sioux, giving the description and boundaries of said section, to be in conformity to the public surveys.

With this understanding, upon the payment of the sum of \$13,911 before noted, the Chicago, Milwaukee and St. Paul Railway Company will be allowed to enter upon the Great Sioux Reservation and construct and operate its wagon road and railway under the provisions of the agreements noted.

The use of the temporary wagon road and railway granted is permitted to your company in accordance with the provisions of the agreements referred to, and is intended to cover all legitimate privileges for traffic and travel consistent with such agreements and the provisions and limitations of the intercourse laws.

Rules and regulations for the guidance of the said company will be duly prepared and transmitted to you.

It is further understood that any default in the stipulations governing the authority granted will be considered sufficient cause by the Department for the revocation of this authority.

Very respectfully,

S. J. KIRKWOOD,
Secretary.

Gen. JOHN LAWLER,
General Agent of the Chicago, Milwaukee and
St. Paul Railway Company, Washington, D. C.

Subsequently the company made an additional deposit of \$1,424.76, part payment for the right of way through the Crow Creek Reservation and for the 188 acres east of the Missouri River, making in all the sum of \$15,335.76. (Senate Ex. Doc. No. 20.)

The circumstances under which the money was deposited by the company and received by the Government is shown by this correspondence. It was not a deposit as earnest money, nor a payment conditioned upon ratification by Congress, but it was made in fulfillment of its obligation under the terms of the agreements, upon the express promise of the Secretary of the Interior that upon the payment of such sum the company would be permitted to enter upon said reservation and construct and operate its wagon road and railway under the provision of said agreements.

Prior to the approval of the agreements entered into between the railway company and the Indians, three wagon roads or routes, as authorized by the second article of the agreement or treaty of September 26, 1876, had been designated by the War Department to be constructed and maintained through said reservation. In reporting upon a letter addressed to the Secretary of War relative to these wagon roads, which had been referred to this Department, the Commissioner of Indian Affairs, on March 1, 1882, called attention to the agreements with the railway company, which had been approved by the Department, and in submitting the inquiry as to whether the Indians in making said agreements understood that they were only carrying out the obligation imposed by the second article of the agreement or treaty of 1876, stated that it was certain the railway company based its application for right of way upon that provision, although it was not referred to in their agreements.

In transmitting this report, the Secretary of the Interior said:

"Upon full consideration of the subject I am of opinion that the three routes indicated for wagon roads westward from the Missouri River from Bismarck, at or near Fort Pierre, and from the Yankton crossing of the Missouri are matters arising under the second article of the agreement referred to, and that the stipulations set forth in the treaty are a consideration for such concession. Further, that any subsequent agreements for roads across said reserve, wherein a valuable consideration is obtained, is in addition to any former existing rights. (Ind. Mis. No. 29, 1882, p. 151.)"

From this time it was understood that the agreements could not be carried into execution without ratification by Congress, and a bill for that purpose was prepared and submitted, but it failed to become a law.

As soon as it was ascertained that the Government could not fulfill its promise to the railway company, upon the faith of which the payment was made, the money was then held by the Government for the use and benefit of the railway company and could have been withdrawn without violating any agreement with the Indians or obligation to the Government. Such was the condition of this deposit when the act of March 2, 1889 (25 Stats., 888), was passed, which provided for the creation of smaller and separate reservations out of a portion of this reservation and for the restoration of the remainder to the public domain. The act took effect February 10, 1890, having been accepted and consented to by the Indians, and said acceptance and consent having been made known by proclamation of the President, as therein provided.

The sixteenth section of the act declared that the acceptance of the provisions of the act by the Indians should not affect any agreement theretofore made with the Chicago, Milwaukee and St. Paul Railway Company for right of way through said reservation or for any lands acquired by any such agreement to be used in connection therewith, except as therein provided:

"But the Chicago, Milwaukee and St. Paul Railway Company and the Dakota Central Railroad Company shall, respectively, have the right to take and use, prior to any white person and to any corporation, the right of way provided for in said agreements, with not to exceed 20 acres of land in addition to the right of way, for stations for every 10 miles of road, and said companies shall also, respectively, have the right to take and use for right of way, sidetrack, depot, and station privileges, machine shop, freight house, roundhouse, and yard facilities, prior to any white person, and to any corporation or association, so much of the two separate sections of land embraced in said agreements; also, the former company so much of the 188 acres, and the latter company so much of the 75 acres on the east side of the Missouri River, likewise embraced in said agreements, as the Secretary of the Interior shall decide to have been agreed upon and paid for by said railroad, and to be reasonably necessary upon each side of said river for approaches to the bridge of each of said companies to be constructed across the river for right of way, sidetrack, depot and station privileges, machine shop, freight house, roundhouse, and yard facilities, and no more," with the following proviso:

(1) That payment shall be made by the company according to the agreements for each mile of road and each acre of land which the company may take and use for railway purposes. (2) That the land shall only be used for railway purposes. (3) That payment shall be made and the conditions performed within six months after the act takes effect; and (4) That the company shall within nine months after the act takes effect definitely locate its line of road, including station grounds and terminals, and within such time file with the Secretary of the Interior a map of such definite location, specifying clearly the line of road, the several station grounds, and the amount of land required for railway purposes, and the Secretary of the Interior shall, within three months after the filing of such map, designate the particular portion of said sections and of said tracts of land which said railway companies may take and hold under the provisions of said act, and the company shall, within three years after the act takes effect, construct, complete, and put in operation its line of road; and upon failure to locate, construct, and operate the same within the time required by the act the lands granted for right of way, station grounds, and other railway purposes shall be forfeited and shall, without further entry or further action on the part of the United States, revert to the United States and be subject to entry under the other provisions of the act.

After providing for the creation of certain separate reservations the act (section 21) restored all other portions of the reservation, except three islands therein named, to the public domain, to be disposed of by the United States, to actual settlers only, under the provisions of the homestead law; but provided that the land so entered should be paid for at the rate of \$1.25 per acre for all lands disposed of within the first three years after the act takes effect, at 75 cents per acre for all lands disposed of within the next two years thereafter, and at 50 cents per acre for the residue of the lands then undisposed of; also that such of said lands remaining undisposed of at the end of ten years from the taking effect of the act shall be taken by the United States at 50 cents per acre, which amount shall be credited to said Indians as part of their permanent fund, and shall thereafter be a part of the public domain, to be disposed of under the homestead laws and the provisions of said act.

The twenty-second section of the act provided—

"That all money accruing from the disposal of lands in conformity with this act shall be paid into the Treasury of the United States to be applied solely as follows:

"First. To the reimbursement of the United States for all necessary actual expenditures contemplated and provided for under the provisions of this act and the creation of the permanent fund hereinbefore provided, and after such reimbursement to the increase of said permanent fund for the purposes hereinbefore provided."

Within the time required by the act the company filed with the Secretary of the

Interior a map of definite location, which was approved subject to the conditions contained in the sixteenth section of the act, and the \$15,335.76 still being on deposit with the Secretary of the Interior, its right to take and use prior to any white person the land specified in the agreement and designated by the maps, for the purposes contemplated by the act, became complete, subject only to forfeiture upon failure to construct, complete, and put in operation the road within three years from February 10, 1890. (See *King v. Chicago, Milwaukee and Saint Paul Railway Company*, 14 L. D., 167.)

The company, having failed to complete the road within the time prescribed by the act, caused a forfeiture of the lands reserved to it under the 16th section of the act of March 2, 1889, and they were declared by proclamation of the President to be restored to the public domain, subject to the provisions of said act. (See *Chicago, Milwaukee and St. Paul Railway Company*, 19 L. D., 429.)

Its right to take and use the said lands for railway purposes prior to any white person being thus forfeited, all lands covered by the agreements thereupon became subject to entry under the provisions of the twenty-first section of said act, and the money accruing from the disposal of said lands, after reimbursing the United States for the actual necessary expenses in carrying out the provisions of the act, has been placed, or is subject to be placed, to the credit of said Indians as a part of their permanent fund.

By the decision of October 21, 1895, it was held that while the payment was originally in the nature of a deposit, when Congress ratified the agreement, and the company accepted the conditions imposed by the act, it became an executed contract, and the deposit was converted into a payment. In other words, it was considered as a purchase under the agreement, which was completed upon the filing of the maps designating the land and the payment of money, subject to forfeiture of the land so purchased upon failure to build the road within the time prescribed by the act, and as the failure to build the road within the time prescribed was solely the default of the company, it can not recover the money, as the Government was not in default.

The plain purpose of the act was to confer upon the company the right to purchase so much of the land covered by the agreements as they might designate by maps of definite location, subject to the approval of the Secretary of the Interior, upon performing certain conditions, but it would not have been compelled to purchase any part of the land that was not used and occupied by it, even if the conditions had been performed. It was an option or privilege that it might have exercised or not at its pleasure. The express language of the act is that the company shall "have the right to take and use, prior to any white person, and to any corporation, the right of way provided for in said agreements, with not to exceed twenty acres of land in addition to the right of way, for stations for every ten miles of road; and said companies shall also, respectively, have the right to take and use for right of way, side track, depot, and station privileges, machine shop, freight house, round house, and yard facilities, prior to any white person, and to any corporation or association, so much of the two separate sections of land embraced in said agreements."

The conditions upon which the right of purchase could be exercised are that the company should, within six months after the act takes effect, make payment for each mile of road and each acre of ground taken under the agreement; that within nine months it shall locate its line of road and designate the land it intended to purchase; and within three years it shall construct, complete, and put it in operation. Upon the performance of these conditions the company would have been entitled to purchase the land designated, and not until then. If it failed to perform any of the conditions within the time prescribed, the privilege to purchase was forfeited and the land which had been held in reservation was restored to the public domain. This is the plain and obvious meaning of the act.

It will be observed that the company was required to make payment within six months after the act took effect, and yet it was allowed nine months after the act took effect to designate the tracts it might have the privilege of purchasing. If a deposit had been made sufficient to cover the whole amount that would have been required in the event that the company elected to purchase all the land covered by the agreements, can it be pretended that it could not have withdrawn the surplus, if within the nine months it should have designated a less area? So it might, within the three years, have refused to purchase any land except what it actually used in the construction and operation of the road, embracing the right of way as stipulated in the agreements. The building of the road would have been a performance of the conditions, and while the company would have been compelled to pay for every mile of right of way taken and used for that purpose, which could have been appropriated from the sum deposited, to the extent of the obligation thus incurred, it was under no obligation to purchase the ground for station purposes, unless used, or the 188 acres on the east bank of the river, or the 640 acres on the west bank of the river, but it would have had an absolute right to withdraw all the surplus after paying for the right of way.

No appropriation of payment has ever been made upon this contract or agreement, and the money deposited by the company to be appropriated in payment for the land whenever it had performed the conditions upon which it could alone have obtained title was not subject to be so appropriated until the company had performed the conditions, and applied to purchase so much of the land embraced in their maps of definite location as it might have desired to purchase. As before stated, it was not bound to purchase any of the land, but if it had constructed, completed, and put in operation its road within the time prescribed by the act it would have been entitled to purchase so much of the land designated by its maps of definite location as it desired. As it failed to construct, complete, and put in operation its line of road within the three years, its right to purchase the same prior to any white person was forfeited, and the lands were by the very terms of the act restored to the public domain, to be disposed of under the provisions of said act for the benefit of the Indians and the proceeds of sale to be credited to the permanent fund.

The language of the act, that "the lands granted for right of way, station grounds, or other railway purposes shall revert to the United States and be subject to entry under the other provisions of this act," upon failure to perform the conditions, does not indicate that definite location of the line of road and the designation of the lands it intended to purchase was the completion of a right or that the contract was thereby executed, because the complete construction and operation of the road through the reservation was a condition precedent to the company's right of purchase.

The two preliminary conditions were that the company should make payment as a guaranty of the fulfillment of its obligation to pay for every mile of right of way and every acre of ground taken under the terms of the agreement, and that it should designate the lands it intended to purchase. The performance of these two conditions within the time required by the act reserved the land from the operation of the other provisions of the act or from any other disposition for the period of time in which the company might perform all the conditions essential to its right of purchase.

I have therefore to advise that the Government has no right to retain this money, and that it should be returned to the company, if it is still under the control of the Secretary of the Interior and subject to be withdrawn from the Treasury, and disbursed by his direction without the action of Congress.

Very respectfully,

WILLIS VANDEVANTER,
Assistant Attorney-General.

The SECRETARY OF THE INTERIOR.

Approved, March 3, 1898.

C. N. BLISS, *Secretary.*

[First indorsement.]

MARCH 3, 1898.

ASSISTANT ATTORNEY-GENERAL FOR THE DEPARTMENT OF THE INTERIOR:

Decides that the Government has no right to retain longer in its possession the money, \$15,335.76, deposited by the Chicago, Milwaukee and St. Paul Railroad Company, in 1881, to be applied for purchase of right of way (lands) through Sioux Indian Reservation in Dakota, and that it should be returned to the company if it is still under the control of the Secretary of the Interior and subject to withdrawal from the Treasury, and disbursed by his direction without the action of Congress.

Decision is approved by Secretary of the Interior, by indorsement hereon.

[Second indorsement.]

DEPARTMENT OF THE INTERIOR, *March 4, 1898.*

Respectfully referred to the Commissioner of Indian Affairs, who is hereby directed to cause an account to be stated and forwarded to the Secretary of the Treasury, for settlement, in favor of the Chicago, Milwaukee and St. Paul Railroad Company, for \$15,335.76; the same being a refundment on account of a payment made by said company for the purchase of right of way through the Sioux Indian Reservation, in Dakota, in 1881, per appropriation warrant No. 39, of May 20, 1891, titled: "Payment to Sioux Nation, right of way Chicago, Milwaukee and St. Paul Railroad Company."

C. N. BLISS, *Secretary.*